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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-330

STANLEY V. TUCKER,

Petitioner

-v-

PAUL B. CRIKELAIR,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

STANLEY V. TUCKER
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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered May 3rd, 1974. Timely Petition for Re-Hearing was filed and denied June 27th, 1974

CITATION TO THE OPINIONS BELOW

To the best of the information and belief of Petitioner the opinions below are not reported.

The opinon of the Ninth Circuit Court of Appeals is printed in the Appendix hereto, Appendix A1 is the denial of the Petition For Re-Hearing and Appendix B1 is the Opinion on the Appeal. Appendix C1 is the Judgment appealed in the District Court.

JURISDICTION

The Petition for Re-Hearing was denied June 27th, 1974. Appendix A1. The jurisdiction of this court is invoked under 28 USC 1254 (1).

RELATIONSHIP AND DISTINCTION FROM THE PETITION FOR CERTIORARI IN TUCKER V THRELKELD

A relationship exists between the Petition filed in Tucker v Threlkeld in that Crikelair, Respondent in this action, was attorney for Threlkeld in the state court proceedings starting about 1960, said proceedings mentioned in both Petitions.

Many of the reasons for granting a Writ are applicable to both cases and repeated herein in full for the convienience of this court.

But the Crikelair "contacts" as stated by the 9th CCA are much weaker and in addition the first amendment freedoms that limit libel actions are briefed herein.

QUESTIONS PRESENTED

1. Was Petitioner's random exercise of first amendment freedoms over about ten years in California including visits to his children and litigation in state and federal forums to vindicate the federally guaranteed rights an"activity" basis for purposes of "long arm" personal jurisdiction?

2. Is incurring of an alleged "judgment debt" in California an "activity" within the meaning of decisions by the U. S. Supreme Court for purposes of "long arm" personal jurisdiction?

3. Where respondent in the District Court in California failed to have summons served by the Federal Marshall as required by FRCP Rule 4c are all subsequent proceedings null and void for lack of jurisdiction?

4. Where Petitioner filed counter-claims in the District Court directly interacting with the complaint and the District Court without motion or hearing dismissed only one of three counter-claims without identification as to which was dismissed is the judgment only "interlocutory" and not "final" for purposes of execution and appeal by reason of failure to comply with the FRCP Rules 21, 42, 54, and 56?

5. Where Petitioner filed three counter-claims one of which challenged the constitutionality of the California "long arm" statute and mandated a three-judge court under 28 USC 2281 and 2284 was the District Court without jurisdiction to order summary judgment without first conveining a three-judge district court?

6. Are the Petitioner's three letters solicted by and sent to law enforcement officers in California federally protected from libel judgment by the First Amendment under the rule of NY Times v Sullivan 376 US 254?

7. Where two years went by between the letters and the filing of the action in the district court is the necessary connection spelled out in McGee v International Life Insurance Co 355 US 220 lacking?

8. Is the state court judgment subject to collateral attack-lack of due process.

9. Should this action be remanded for trial on facts relevant to the "activity" basis anf for trial on the counter-claims never ruled upon?

10. Is Respondent's Affidavit for Summary Judgment Barren of A single Fact to Provide a "long arm activity" basis and does the factual record fail to support the Opinion of the 9th CCA?

CONSTITUTIONAL AND STATUTORY PROVISIONS

First Amendment - U S Constitution

> "Congress ahll make no law.... abridging ... the freedom of speech.. or the right of the people to assemble, and to petition the government for redress of grievances..."

FACTUAL BACKGOUND

Respondent was attorney for the former wife of Petitioner (former wife is Respon dent in companion Petition For Certiorari) for a limited period from about 1966 to about 1969.

Petitioner and his former wife both lived in peace in the east for about twelve years as man and wife and with three small children moved in 1955 from the east coast to California and immediately fell into difficulties with mother-in-law to Petitioner.

Petitioner's wife commenced a series of divorce proceedings in the Los Angeles Superior Court starting about 1959 and culminating in a divorce about 1960. In attempting to visit his three minor children Petitioner was repeatedly harrassed

and sometimes suffered verbal abuse or attack or children were concealed from Petitioner in other cities or counties with relatives of the former wife.

Tiring of the constant litigatious harassment and greatly concerned over the permanent damages being done to the minor children Petitioner deeded to former wife valuable income property in Sherman Oaks, California in exchange for the right to have his children with him in the East summers and in Calif. when on vacation or visiting.

Commecing with about 1966 and with respondent, Crikelair's appearance as attorney for former wife of Petitioner, events took a more bitter and harsh turn. Using his influence as reserve police officer Crikelair repeatedly had Petitioner arrested and all arrests ending in dismissals or sought warrants that were refused as without merit.

Constantly when Petitioner arrived in California from Connecticut to visit his children Crikelair lurked in the background in his automobile, glaring at Petitioner and apparently calling the police. On arrival of police Crikelair would inject abuse into the scene and make threats. All contacts with police were courteous in contrast to behaviour of Crikelair.

This action flows from an incident

when Petitioner remained in the east being represented by California counsel who caught Crikelair concealing a gun in his briefcase in open court when a case both were involved in was called. On swift challenge as to cause spontaneously Crikelair retorted he was carrying the gun.....

"..... to get Tucker!

Immediately contacted by his California counsel Petitioner was given solemn warning concerning Crikelair and his law partner, Robert R. Anderson.....

"....stay away from those clowns....

..... they are carrying guns ....

..... they are out to get you!"

Fearful Crikelair was partially demented with hostility and carrying guns might attack Petitioner in front of his children phone calls were made to:

1. Sheriff - to check gun permit

2. District Attorney - possible criminal action

3. State Bar- file complaint

Each of these agencies were a proper and lawful agency with jurisdiction over the questions raised. Each agency requested the complaint be set forth in writing and to each agency Petitioner responded by a letter setting forth the facts and problems.

FACTUAL BACKGROUND OF CALIF STATE JUDGMENT

Petitioner filed a civil action over the interferecne with child visitation and Crikelair filed counter-claims for libel over the letters to the law enforcement agencies.

Crikelair obtained an order under CCP 391 for Petitioner to post security cost bond and Petitioner being unable to post the bond the complaint was dismissed.

This litigation was prior to the decision of this court in Boddie v Conn. 401 US 391 and without benefit of the follow-on cases.

Petitioner timely filed disqualified CCP 170.6 of the law & motion judge and of the trial judge and timely claimed the case for jury and paid jury trial fee. The judges refused to conform to the mandatory state statute disqualification and denied a jury and rendered the default judgment at issue in this action.

THUS PETITIONER CONTENDS THAT THE STATE COURT JUDGMENT WAS VOID AND IN VIOLATION OF FUNDAMENTAL GEDERALLY GUARANTEED RIGHTS TO A JURY AND TO A FAIR AND IMPARTIAL JUDGE.

FACTUAL BACKGROUND OF FEDERAL PROCEEDINGS

Eighteen months after judgment was entered in favor of Respondent, Crikelair, commenced an action in the District Court of California to bill collect his state judgment (and not in the District of Conn. where Petitioner resided)

This was not a "tort"action on the alleged libels in the three letters but pure and simply a debt collection.

An ex parte application was made in the district court for order permitting out of state service of summons but a FATAL BLUNDER took place - the summons was not served by the Federal Marshall as required by FRCP Rule 4 c but by a private person as permitted under California state codes.

Petitioner filed a Jury Trial Demand, an Answer, Special Defenses as to the First Amendment Freedom to Criticize public officials (including police officers), lack of Jurisdiction and Disqualification of the state Trial Judges, and three counter-claims.

First Counter-Claim: Petitioner sought declaratory relief (and damages as to lost cause of action) as to disqualification of Trial Judge under mandatory state law CCP 170.6.

Second Counter-Claim: Petitioner sought declaratory relief that the Calif. statute

CCP 391 under which the Petitioner's state court complaint was dismissed for inability to post security cost bond. The challenge was substantial in light of Boddie v Conn, supra.

Third Counter-Claim: Petitioner challenged on constitutional grounds the California long arm statutory service.

Favorable ruling on the first & third counter-claim would invalidate the state court judgment and the federal judge had a statutory duty to hear the federal questions.

TThe Second and Third Counter-Claims raised constitutional challenges to two California Statutes and the District Court was without jurisdiction to enter judgment of any kind and only had the authority to conveine a Three-judge federal court. 28 USC 2281 and 2284.

Summary Judgment: The trial court granted summary judgment on the complaint without ruling on the counter-claims, but did file a dismissal as to one counter-claimw without any identification as to which was dismissed. The District Court failed to make any of the mandatory rulings required by FRCP Rules 21, 42, 54 and 56 .

SUBSTANTIAL REASONS FOR GRANTING WRIT

Since this Court's decision in International Shoe v Washington 326 US 310

(1945) there has been a nation wide flood of state "long arm" statutes. As of this writing only nine states do not have a "long arm" statute. Eighteen states have a carefully defined or "limited" long arm statute. Twenty-three states have a 'generalized long arm statute and California is in this group adopting its long arm statute in July 1970.

CALIFORNIA ALONE OF ALL THE STATES HAS A "LONG ARM" STATUTE WITHOUT ANY DEFINITION AT ALL.

As a result the decision below is a welter of contradictions and conflicts with the decisions of the UNITED STATES SUPREME COURT and conflicts with decsions of other Circuit Courts of Appeal and repeatedly violates or ignores fundamental federally guaranteed rights and/or statutory reuirements as set forth in the FEDERAL RULES OF CIVIL PROCEDURE.

In addition the decision below upholding a libel judgment based on complaints to public officials criticizing a police officer violate First Amendment freedoms as set forth in NY Times v Sullivan, 376 US 254 and follow on cases.

Truly this is a case that should be summarilly reversed or carefully reviewed on the merits.

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE UNITED STATES SUPREME COURT

The Petitioner's activities in California have been non-existant for five years and for eight years prior to the five (going back a total of 13 years) have consisted of random exercise of first amendment freedoms consisting of visiting his children, writing letters and seeking justice by petitioning the courts for redress of grievances.

These first amendment activities do not meet the minimjm activities test of International Shoe v Washington 326 US 310 .

The U. S. SUPREME COURT in International Shoe, supra, established a flexible rule for dtermining jurisdiction:

> "It is evident that the criteria by which we mark the boundary line between those activities which justify this objection of a corporation to suit and those which do not cannot be simply mechanical or quantitative. The test is not merely, as has some times been suggested, whether the actvity , which the corporation has seen fit to procure through its agents in another state, is a little more or a little less.... Whether due process is satisfied must depend rather upon the quality and the nature of the activity,

> "in relation to the fair and orderly administation of the laws of which it was the purpose of the Due Process clause to insure. That clause does not contemplate that a state may make a binding judgment in personam against an individual or corporate defendant with which the state has no contacts or relations."

It was noted by the Supreme Court in McGee v International Life Insurance Co 355 US 220 a trend of expanding jurisdiction over a non-resident. However, in Hanson v Denckla, 357 US 235, the High Court still recognized there were limits to this expansion":

> "But it would be a mistake to assume that this trend hearalds the eventual demise of all restrictions on personal jurisdiction of a state court (cites). Those restrictions are more than a guaranty of immunity from the inconveinience of distant litigation. They are the consequences of territorial limitation on the power of the respective states. However minimla the burden of defending in a foreign tribunal a defendant may not be called upon to do so unless he has had the "minimal contact".... It is essential in each case that there be some act by which the defendant purposefully avails himself of the priviledge of conducting activities within the forum state, thus invoking the protection of its laws"

Crikelair's Affidavit In Support of Summary Judgment P 12:

> "Tucker moved from California to Connecticut in 1961. For the next eight years he traveled regularly between those states. His activities as far as they were known to me, consisted primarily of visiting his minor children domiciled here and conducting litigation."

Crikelair's affidavit is a masterpiece of understatement on the issue of lack of "activity" - inherent in his statement is the clear implication that if Petitioners minor children had not resided in Calif. Petitioner would not have "visited" in California at all. Inherent and implied in Petitioner's attempted civil suits to vindicte rights to his children as harassed by Crikelair and hie clients is the clear fact that if they had not harassed there would not have been any litigation in California.

Thus we see Petitioner had no "voluntary" acts at all but "involuntarilly" of necessity exercised on a random basis his first amendment freedom to visit his children and sought to defend them in court.

SO OBVIOUSLY DO PETITIONER'S ACTIVITIES FALL OUTSIDE THE SCOPE REQUIRED FOR JURISDICTION BY DECISIONS OF THE U. S. SUPREME COURT THAT THE ORDER BELOW SHOULD BE SUMMARILLY REVERSED AND THE COMPLAINT DISMISSED FOR LACK OF PERSONAL JURISDICTION.

"It has generally been recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporations's behalf are not enough to subject it to suit on causes of action unconnected with the activities there."

St Clair v Cox 106 US 350
Old Wayne Life Assn v McDonough
204 US 8, 21
Frene v Louisville Cement Co
134 F 511

II. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE CIRCUIT COURTS OF APPEAL

The very weakness in Crikelair's claimed "activity" basis was recognized by the 9th CCA, Appendix B1:

"We recognize that the contacts between Tucker and the state of California are, as related to the action brought by Crikelair weaker than the contacts relied upon in the Threlkeld case, and further that the lapse of time between entry of judgment and the initiations of this action to enforce that judgment is longer"

WHILE IN THE THRELKELD CASE THE 9TH CCA ATTEMPTED TO BASE JURISDICTION ON PRIOR ALLEGED TORTS NO SUCH TORTS EXIST

IN THIS ACTION OTHER THAN THE LETTERS WHICH PETITIONER CONTENDS ARE FEDERALLY PROTECTED UNDER THE FIRST AMENDMENT.

II. A. THE 4TH CA HAS EXPLORED AND REJECTED A MULTIPLICITY OF LITIGATIONS AS AN ACTIVITY BASIS 1962

Dragor Shipping Corp v Union Bank Car Co [illegible] F 2d at P 44:

> "participation in litigation in courts of state does not constitute doing business within state so as to subject litigant to in personam jurisdiction of courts of state"

Dragor at P 45:

> "Dragor's sole contention on appeal is that the Arizona District Court's assumption of jurisdiction over the person of Dragor and thereby over the subject matter of this action deprived Dragor of due process, and is therefore unconstitutional."

This court is reminded of Petitioner's contentions herein being identical to those of Dragor in Arizona.

The Dragor cases involved extended litigation in the courts of Arizona between the same parties. A stipulation was signed for settlement payment of $1,000,000 and the federal cases dismissed. Payment was not made. New suit was started based on

litigation in Arizona. The 4th CCA stated that the prior litigation was without necessary constitutional significance, and lacking the necessary constitutional connections. See McGee, Supra.

Dragor P 48: "4,5. In McGee, supra, no activity apart from or antecedent to the contract was relied upon by the court in holding that the contract sued upon was sufficiently connected with the forum state to satisfy due process requirements. It would not be correct, however, to say that such activity will never be relevant in establishing the necessary minimu contacts. A contract upon which suit is brought may bring into issue prior dealings between the parties in the forum state, and these dealings may well provide a basis for jurisdiction. But where the agreement sued upon is in the nature of a settlement of existing claims, and the only issues presented relate to its breech and not its validity, we think the antecedent dealings without constitutional substantial connection"

Dragor P 49: " 6, 9. The execution and delivery of the note took place in New York and so could not, in any event have significance where the inquiry concerns act-

Dragor P 49 continued:

> "tivity in the forum state. The Stipulations dismissing the Arizona suits were executed in New York but filed in Arizona. Such filing was long beprior to Sept 30, 1964 when, Union a asserts, Dragor committed the breaches sued upon. The filing of the dismissal constitutes an isolated act having no legal significance in this law suit. It does not provide the substantial connection of the kind referred to in McGee."

Without a doubt following the reasoning of the Dragor court and the filing of letters of complaint with proper law enforcement officers nor the follow-on litigation over these letters does not.....

> "Provide a substantial connection of the kind referred to in McGee"

II B. THE DECISION BELOW CONFLICTS WITH RECENT DECISIONS IN OTHER DISTRICTS

See the March 25th, 1974 Fed Supp P 1366 Munchak Corp v Riko Enterprises. Dec 21, 1973 USDC N. CAROLINA.

Munchak, supra, rejected litigation as a permissible constitutional jurisdictional basis P 1366:

Munchak P 1366:

> " presence in a state solely to participate in litigation is not, by itself, sufficient connection with that state to make a person amenable to the states' jurisdiction"

The Munchak Plaintiff argued that the defendant"controlled" the litigation thus there was alleged necessary "activity" See how this claim was rejected in North Carolina P 1369:

> "2. Plaintiff contends that defendant controlled the defense of the earlier action brought in this Court by Plaintiff against Cunningham, including the payment of costs. Although defendant denies that it "controlled" the litigation, there is no dispute as to the defendant's participation in that action on Cunningham's behalf. In either event, presence in a state solely to participate in litigation is not, by itself, sufficient connection with that state to make a person amenable to the state's urisdiction. See Dragor, supra. Moreover, to so hold might conflict with traditional immunity principles designed to further the orderly administration of justice. See Vol 4 Wright and Miller, Fed Practice & Procedure Sec 1076.

On the strength of Munchak and Dragor courts the 9th CCA Opinion hlding that .."holding Tucker... to litigate ... a California state court judgment in a federal district court in Califrrnia.." is not unreasonable must be rejected and this action reversed and the complaint dismissed for lack of in personam jurisdiction.

Munchak P 1374: "True, the defendant engages in a widely dispersed entertainment activity. However, unlike the "stream of commerce" fact setting the injuries alleged in this lawsuit did not result from this activity of the defendant. The agent of the harm was not the defective product. Nor can this case be brought within constitutional limitations when the unrelated activities of defendant are considered."

Without the slightest shadow of a doubt the claim pressed in the District Court by Crikelair was a bill collection for an alleged state court judgment debt, one Petitioner claims is void for lack of due process and totally unconnected with the alleged torts (inability to post security cost bonds) in the companion Petition For Certiorari, Tucker v Threlkeld. The 9th CCA was wrong in sustaining the judgment below ...."for the reasons stated in Threlkeld v Tucker decided this day..... as those reasons are unconn ected with Crikelair, unconnected with the letters basis of this action and unconnected in time by seven to nine years.

II C. THIS ACTION IS NOTHING MORE OR LESS THAN A SHABBY ATTEMPT TO USE THE FEDERAL COURTS TO BILL COLLECT A STATE COURT JUDGMENT DEBT

The federal courts are not bill collectors for the state courts yet without a doubt that is exactly what the lower courts have been doing in this action despite the mumbo-jumbo language attempting to avoid the thrust of the clear and undisputed facts.

Memorandum Appendix B 1: "Crikelair brought this diversity action upon an unpaid judgment of the Calif. Superior Court"

Could there be a more obvious admission of a bill collectors action in federal court?

Memorandum Appendix B2 : "The action in which the counter-claim arose was but one event in an apparent scheme of harassment"

Yet where in the record are any allegations of harassment and any events of harassment other than the three letters to law enforement officials of California? These are treated elsewhere in this brief as to First Amendment protections.

Hollow words,indeed, by the 9th CCA!

s action is precisely a shabby attempt ruthlessly and illegally use a federal um deliverately picked as far remote n Petitioner to obtain at great convien- ce to Respondent a state court judgment verted into a federal judgment for bill lection purposes.

Compare the simple language in the plaint, the skimpy one sentence statment claim that reveals in its stark simplicity nature as a bill collection vehicle and pare with the mumbo-jumbo used by the CCA:

mplaint in USDC Appendix

"2. Only July 2, 1970, in an action in the Superior Court of the State of California, County of Ventura, a judgment was duly entered in favor of plaintiff and against defendant in the sum of $17,500.00"

Here with the cow webs and snake talk of the 9th CCA opinion swept aside we see the "bill collector's dream" - a state court judgment - which by no stretch of imagination can be converted into any "scheme of harassment' nor equated with alleged torts in Tucker v Threlkeld Petition relating to dismissals of state action for inability to post security cost bonds.

T INCURRANCE HAS NEVER BEEN" ACTIVITY" JURISDICTIONAL PURPOSES AND BILL COLLECTION NOT A FEDERAL COURT FUNCTION ESPECIALLY STATE COURT JUDGMENTS

II D. STATE FORUMS AND CALIFORNIA HAVE LONG REJECTED LITIGATION AS AN "ACTIVITY" LONG ARM BASIS

Long the leading case in Collar v Penn. Gas Co the Missouri Supreme Cout rejected malicious prosecution as an activity basis. 295 SW 2d 88.

Collar P 88: " The Supreme Court held that a foreign corporation was not "doing business" when it merely prosecuted action in state"

Collar P 91: "No cases have been cited and our research has disclosed none wherein the courts have discussed the effect of filing a suit insofar as such relates to the issue of "doing business". However it is well settled that engaging in litigation and the compromise and collection of debts do not constitute "doing business"

Collar opinion would prohibit Crikelair's attempt to use debt as an "activity."

In Painter v Colorado Springs etc 104 SW 1139 An agent of a foreign railroad while investigating a claim for damages was served with summons and complaint and the Missouri court refused to uphold jurisdiction. See also Nathan v Planter Cotton 174 SW 126. 23 Am Jur Section 370 Foreign Corporations, P 353, 354.

The effect of the federally protectd right to litigate on the permissability of evidentiary use of prior litigation was faced squarely in the Florida District Court of Appeal (Oct 1969) Zabner v Howard Johnson 227 SO 2d 543. In this case prior litigation was used for attacking the dibility and held improper for reason as follows:

> "To determine litigiousness to be the proper subject of cross ex amination for impeachment purposes would be tantamount to stating one creates a legal wrong by enforcing one's rights when they are violated. Such would be a gross infringement upon the basic rights. The great Justice Cardozo once stated that to enforce one's rights when they are violated is never a legal wrong and may often be a moral duty"

See:

a. Grenadier v Surface Transport 271 App Div 460 NY

b. Ryan v Int Harvester 204 Minn 177

A most noteworthy case applicable to facts herein involved Mr Titus of Massachusetts who wrote letters to California, and litigated or negotiated and conducted legal affairs with his ex-wife in California regarding minor children domiciled in California.

The California state court refused personal jurisdiction "in personam" on grounds such "legalistic" activities were not "activities" within the rule contemplated by the U. S. Supreme Court when the due process limits were set for state and federal courts to follow in International Shoe, supra.

Titus v Superior Court
100 Cal Rpt 477

> "father's relationship with California was primarilly a legalistic one"

III. THE JUDGMENT IN THE DISTRICT COURT IS VOID DUE TO DEFECTIVE SERVICE WHICH SHOULD HAVE BEEN MADE BY THE FEDERAL MARSHALL FRCP RULE 4 c

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FRCP RULE 4 c : " Service of all process shall be made by a U. S. Marshall or some person especially appointed by the court for that purpose."

The recent case from the 9th CCA of Veeck v Commodity Enterprises, 437 F 2d 423 unequivocably settled this question under a factual background remarkably analagous to this action.

Veeck P 425 : " The district court was persuaded that the mandatory lang-

Veeck P 425 continued:

> "uage of Rule 4c could be circumvented by Veeck's sylogistic argument. We disagree. When personal service of original process is made pursuant to Rule 4e it must be made by a person specified by Rule 4c. See 2 J. Moore, Federal Practice S 4.08 at 1009 - 1011 (2nd @d 1970); Barron & Holtzoff, Federal Practice and Procedure S 1092 at 353 (Wright Ed 1969) cf US for Use of Tanos v St Paul Mercury Ins Co 361 F 2d 838(5th CCA 1966). Accordingly since Howes was not a person specified by Rule 4c he lacked proper authority to serve the district court's summons upon the appellants."

The affidavit of service in the record below signed by an Allison Pemberton is a masterpiece of understatment:

> "I charged no fee for such service"

If a fee had been charged by the U.S. Marshall a proper service would have resulted. As the facts undisputably stand in this action Allison Pemberton just like Howes in Veeck, supra.....

> "... was not a person specified by Rule 4c. He lacked proper authority to serve the district court's summons.

Veeck P 426:"(4) The district Court's lack of in personam jurisdiction over the appellants renders void its default judgment against them. Pennoyer v Neff 95 US 714. Accordingly the district court should have granted their motion to set aside that void judgment. Ruddies v Auburn Spark Plug Co 261 F Supp 648 FRCP Rule 55c & 60B 4."

Without question the factual and legal pattern of Veeck, supra, fit this case and on Veeck alone this Court is justified in summarilly reversing the decision below and remanding with instructions to dismiss the complaint for lack of "in personam" jurisdiction.

THE FATAL BLUNDER OF RESPONDENT IN FOLLOWING THE STATE LAW IN SELECTION OF PERSON TO MAKE SERVICE RATHER THAN COMPLIANCE WITH THE MANDATORY FEDERAL RULES IS FATAL AND CANNOT BE CURED AT THIS LATE DATE.

That the federal rules have statutory effect and must be followed or due process is denied and the resulting judgment is invalid is concurred in by the 5th CCA:

U S For Use of Tanos v St Paul
5th CA 1966 361 F 2d 838

See Moores Fed Practice 2nd Vol 7 Ch 69 S 60.04

The 10th CCA has also concurred with the above rulings by the 9th & 5th CA.

Rumsey v George E. Failing Co
10th CCA 1964 333 F 2d 960

"FRCP have force and effect of statute"

Yet the proceedings below repeatedly ruthlessly violated FRCP by violation of Rule 4c as developed above and by violation of Rules 21, 42, 54 and 56 as developed hereinbelow in Point V Pages 31 to 35 .

THE DENIAL OF DUE PROCESS BY VIOLATION OF STATUTORY RULES IS GROUNDS FOR SUMMARY REVERSAL WITH INSTRUCTIONS TO DISMISS THE COMPLAINT

IV. THE JUDGMENT IN THE DISTRICT COURT IS VOID BECAUSE THE JUDGE USURPED THE FUNCTION OF A THREE-JUDGE COURT

The second counter-claim challenged the constitutionality of CCP 391 under which Petitioner's state court complaint was dismissed for inability to post security cost bond. In light of Boddie v Conn 91 St Ct 780. this posed a substantial federal question and mandated the calling for a three-judge district court under 28 USC 2281 and 2284. The single judge was without jurisdiction to issue judgment of any kind.

The actions of the state court judge were undoubtedly motivated by malice and hatred since he had been disqualified by mandatory statutory disqualification under CCP 170.6. See Appendix .

Boddie, supra, was not available at the time this action was litigated in the state courts. In Boddie, potential divorcees in New Haven lacked money for court costs and sheriff's fees in their welfare budgets approximating in excess of $4,000/ year apiece. The Supreme Court held the state could not deny access while they saved up the costs out of their welfare budgets but must open the doors to the courts without costs.

The California statute must be held unconstitutional under Boddie as there was provided no alternate method to get into court if the cost bond could not be posted and dismissal was mandatory on part of the state judge.

SUCH A SUBSTANTIAL QUESTION IS NOT TO BE TREATED LIGHTLY BY A SINGLE DISTRICT JUDGE.

Boddie P 781: " Due process prohibits a state from denying solely because of inability to pay court costs and fees access to its courts to indigents."

The third counter-claim challenged on constitutional grounds the validity of the California long arm statute and its method of service as used herein. Upholding this challenge would invalidate the district court's decision. This too required a three-judge district court.

In Farley v Farley (3 Cir 1973) the 3rd CCA held that in a case calling for a three-judge court the single district judge is limited to determining if a substantial question exists. There can be no doubt in light of cases briefed above the question was substantial and merited decision by a three-judge court and no doubt but that the single judge exceeded his jurisdiction, in granting summary judgment.

See also Hannis Distilling Co v City of Baltimore (1910) 216 US 285

See Idlewild Liquor Corp v Epstein (1962) 370 US at 715:

> In the Stratton case it was held that a court of appeals was precluded from reviewing on the merits of a case which should have originally been determined by a court of three judges. Stratton does not stand for the broad proposition that a court of appeals is powerless ever to give any guidance when a single judge has erroniously invaded the provice of a three-judge court....."

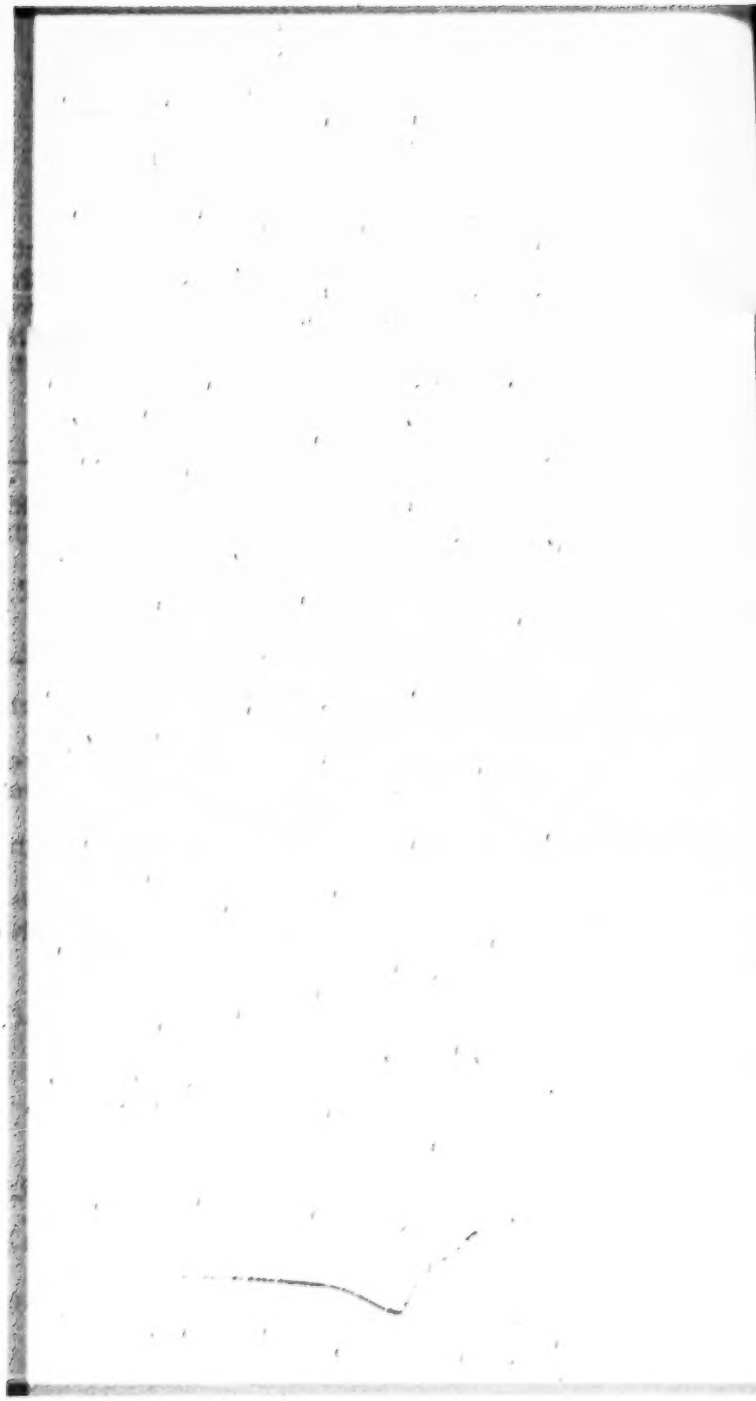
On Strength of above cases this court is requested to reverse and remand with instructions appropriate to conduct proper three-judge court proceedings on the counter-claims and thereafter proceed to the merits of the complaint, if any remains.

V. IS THE JUDGMENT IN THE DISTRICT COURT "INTERLOCUTORY" AND NOT FINAL FOR PURPOSES OF ENFORCEMENT AND APPEAL BY FAILURE TO FOLLOW FRCP RULES 21, 42, 54 AND 56?

The events below in the district court are undisputed. This Petitioner filed three counter-claims that have never been litigated nor adjudicated. Two of these are beyond the power of a single judge to dismiss or grant summary judgment. The court below in its order of dismissal ordered one counter-claim dismissed without any identification as to which of the three was being dismissed.

Appendix C 4 : "2. Defendant's purported counter-claim is dismissed with prejudice and without leave to amend."

The two counter-claims requiring a three-judge court are treated, supra, in Point IV, and the substantiality of the federal question cannot be disputed in light of Boddie, supra, and in light of the challenge



to the constitutionality of the Calif. long arm statute and its service which could upset jurisdiction of this court below.

The other counter-claim , denominated First Counter-Claim, requested declaratory relief as to the Affidavits of Prejudice filed in the state court under CCP 170.6 that mandatorilly disqualified the judges. This counter-claim sought a declaration that the proceedings in the state court were void. The serious federal question meriting hearing and not dismissal on motion cannot be avoided in light of:

Mayberry v Penn Jan 1971 27 L Ed 2d 532

> "The circumstances...deprive... the proceedings of the appearance of even handed justice which is the core of due process"

Six months later the U. S. Supreme Court affirmed and expanded this principle in":

Johnson v Mississippi June 1971 91 S Ct 1778

> "It is plain that he was so emeshed in matters that it most appropriate for another judge to sit. Trial before "an unbiased judge" is essential to due process." Bloom v Illinois 391 U S 194

IN THIS ACTION THE ORDER BY THE DISTRICT COURT IS BRAZENLY BARREN OF THE MANDATORY ORDERS REQUIRED BY THE FRCP

FRCP RULE 21: "Any claim may be severed a and proceeded with independently"

The record in the district court is brazenly barren of any Rule 21 order severing the action to proceed independently on complaint from counter-claims. Indeed such an order would itself be open to question in light of the obvious interrelationships of the complaint and counter-claims since a favorabel ruling on any of the three counter-claims would invalidate in its entirety the complaint.

FRCP RULE 42: " When actions involving a common question of law or fact are before the court it may order a joint trial... to avoid prejudice it may order a separate trial...."

In this action the district court neither ordered a joint trial nor ordered a separate trial. Rule 42, as was Rule 21, were totally ignored.

Prior cases have ruled on circumstances where district judges ordered summary judgment without compliance with Rules 21, 42, 54 or 56. Such a case is:

Gillespie v Norris (9th CCA 1956) 231 F 2d 881

Gillespie P 883: "There is no order of the court disposing of these allegations of the counter-claim or the issues thereon, so far as the record before us discloses. The entire claim of Defendant was disregarded."

Gillespie P 884: "But it is obvious that the counterclaim and the issues thereon, if any, were not adjudicated by the trial court. Under such circumstances Rule 54b FRCP must be applied, Glens Falls Indemnity Co v American Seating Co 225 F 2d 838. The appeal is dismissed as premature. There was no finding that a partial judgment could be entered without embarrassment to the issue remainding unadjudicated"

In this action from sheer necessity this Petitioner was forced to appeal or be foreclosed as to valuable rights although his counter-claims remain unlitigagted.

In addition in continuation of his pattern of malicious harassment the Respondent and/or his co-counsel have commenced filing of purported judgment liens on property of the Petitioner in Connecticut thus effectively immobilizing his business affairs.

ON STRENGTH OF ABOVE RECORD AND ESTABLISHED LAW THIS COURT IS ASKED TO DECLARE THE JUDGMENT IN DISTRICT COURT "INTERLOCUTORY" AND NOT FINAL FOR ENFORBEMENT OR APPEAL.

FRCP RULE 54 b : "When more than one claim for relief is presented in an ...action the court may direct the entry of a final judgment as to one or more ONLY UPON AN EXPRESS DETERMINATION THAT THERE IS NO JUST REASON FOR DELAY AND UPON AN EXPRESS DIRECTION FOR THE ENTRY OF JUDGMENT."

The record Appendix C1 is brazenly barren of the termination orders required by Rule 54 b. Without a doubt this court should rule that the order in the district court is INTERLOCUTORY AND NOT FINAL for ALL PURPOSES INCLUDING APPEAL AND ENFORCEMENT.

VI. THE FACTUAL RECORD DOES NOT SUPPORT THE OPINION OF THE 9th CCA AND RESPONDENT'S AFFIDAVIT FOR SUMMARY JUDGMENT IS A "BILL COLLECTOR'S MASTERPIECE" - TOTALLY IRRELEVANT

The opinion of the 9th CCA Appendix B1 is replete with conflicting and contradictory and unsupported by the record "snake talk" upon which the decision is purportedly based. This opinion is allegedly made "... for the reasons stated in Tucker v Threlkeld decieded this date...."

Yet those reasons do not appear in this action. At best this action is a bill collection on a state judgment debt or at worst an attempt to base jurisdiction on three letters protected by the first amendment. Nowhere and no how

can the basis in Threlkeld, namely state actions dismissed for failure to post security cost bond be used to claim a "tort" jurisdiction in Crikelair case. The facts simply do not appear in this action. The events are remote in time, involve different people and are barred by McGee, supra in lacking necessary connection.

Crikelair's affidavit for summary judgment lays bare the lack of an activity basis:

Appendix : "Tucker moved from California to Connecticut in 1961. For the next eight years he traveled regularly between these states. His activities, so far as they are known to me, consisted primarily of visiting his minor children domiciled here and conducting litigation"

The above allegation helps greatly to support Petitioner's contention that his activities were all federally protected. Crikelair provides nothing relevant to the issues as described in the beginning of this Petition other than an chronology of events in the state court.

Even the allegation that "Tucker moved from Calif to Conn" is hearsay because Crikelair did not come along on the trip and only knows what he was told by others.

This is a typical sample of the irrelevancy of the affidavit. Crikelair fails to show the many actions Petitioner allegedly had involved Crikelair in person or in time.

VII. PETITIONER"S THREE LETTERS TO LAW ENFORCEMENT OFFICIALS WERE PROTECTED UNDER THE FIRST AMENDMENT. NY. TIMES v SULLIVAN 376 US 254.

Petitioner contends that the state court libel action is void and unconstitutional because the three letters written to law enforcement officials in California concerned a public official, Respondent, Crikelair and gun threats he made against Petitioner. Crikelair used his authority as a reserve police officer to instigate numerous arrests of Petitioner all ending in dismissals in the Municipal Court. In addition he concealed his gun and made death threats in open court. All of the above is undisputed. The letters were first amendment protected for the added reason that a matter of great public interest was involved, namely the carrying of guns concealed in open court and making of threats by a reserve police officer. The letters were further protected by the first amendment protecting the right to petition the courts for redress of grievances.

In NY Times, supra, the U. S. SUPREME COURT established that libel of a public official was federally protected unless made with reckless disregard for the truth.

In Curtis Publishing Co v Butts, 388 US 130 this protection was extended to "public figures".

In Rosenbloom v Metromedia, 403 US 29 (1971) This Court extended the protection to "public issues".

In Getz v Welch 94 S Ct 2997 (June 1974) this court carefully reviewed the history of extension of first amendment protection in libel cases and erronious decisions made in the lower courts. In Gertz this court reaffirmed the principles of first amendment freedoms as set forth in above cases and held "actual malice" required a high degree of awareness of probable falsity.

Petitioner has consistently maintained the truth of allegations of the three letters, basis for the state court libel action.

Respondent failed to make any showing of malice or even pretend to allege the Getz, supra, rule of "high probability of falseness." Indeed at most the state court complaint is totally "conclusionary" as to both malice and acts of malice and as to damages.

For example on damages Crikelair alleged he had "been injured in his profession". Yet on the record we can ask how? No loss of client or income is alleged or shown. How indeed can a letter to a Sheriff or a District Attorney or to the State Bar cause a "loss or injury in Crikelair's profession? We can only surmise the state trial judge disqualified for prejudice under CCP 170.6

and possibly motivated by malice or revenge to this Petitioner glossed over the deficiencies glaring in Crikelair's state action to award judgment adverse to this Petitioner.

Crikelair's Affidavit in support of summary judgment in the district court is of paramount importance on this issue:

Para II of Crikelair Affidavit:

"I HAVE BEEN AND REMAIN ,HOWEVER, A MEMBER OF VENTURA POLICE RESERVE."

This admittance available to this court as part of the record below is dispositive of the issue and establishs beyond all doubt but that first amendment freedom prohibits a libel judgementunder constitutional standards,in this action.

Of Interest is Monitor Patriot v Ray 91 S Ct 621 (1971) at P 621:

> "The Supreme Court, Mr Justice stewart, held that as a matter of constitutional law, a charge of criminal conduct, no matter how remote in time or place can never be irrelevant to an official's fitness or candidates fitness for office for purposes of applying the "knowing false hood or reckless disregard rule"

The relevancy to Crikelair is that the charges to law enforcement officials was relevant to his fitness as a police officer.

The question of whether a police officer is a "public official" has been consistently settled in the affirmative in many cases in many jurisdictions.

The First Amendment priviledge was upheld over Chicago Police Officer Pape in Time Inc v Pape, 91 S Ct 633. Obviously, there can be no First Amendment difference between Chicago Police Officer Pape and Ventura Police Officer Crikelair.

Cases supporting applying First Amendment freedoms to criticizm of police officers was well summarized in 19 ALR, Third Series, P 1361, 1375 - 1377.

A parish police captain and deputy sheriff were held in Thompson v St Amant (1966) 184 SO 2d 3114 to be public officials within the NY Times rules. Petitioner's argument to apply the NY Times rule to this action with Crikelair is more compelling than Thompson, supra, because in this action the letters were sent to offical law enforement officers or agencies whereas in Thompson case applies to statments made in a television broadcast.

A police lieutenant was held to be a public official in Gilligan v King (1965) 264 NYS 2d 309. The defendants were members of a civil review board - thus further strengthening the First Amendement application to the facts below.

See also Smith v Hatch 76 Cal Rptr 360 (1969) where letters regarding attorneys were held federally protected.

Petitioner has consistently affirmed the truth in the letters basis for the state court judgment. Crikelair's sole allegation in his complaint: "said statements were false and defamatory and known by plaintiff to be so".. is far from the Getz standard of "a high degree of awareness of probable falsity".

CRIKELAIR's COMPLAINT IN THE STATE COURT WAS DEFECTIVE AND LACKED ALLEGATIONS TO MEET REQUIREMENTS FOR FIRST AMENDMENT CASES BY U. S. SUPREME COURT.

VIII. PETITIONER'S THREE LETTERS TO LAW ENFORCEMENT OFFICIALS WERE ABSOLUTELY PRIVILEDGED UNDER CALIF. CIVIL CODE S 47(2)

Calif Civil Code S 47: "A privileged Publication is one made....

(2) In any...(2)judicial proceeding or (3) in any proceeding authorized by law.."

There is no need to brief this court as to that complaints to the Sheriff, the District Attorney and to State Bar are all "authorized by law" and that many judicial proceedings are initiated by one of the three types of complaint described above.

Smith v Hatch (1969)
76 Cal Rpt 250

"Letter, which attorney wrote to contractors association he was representing in litigation pending between that association and a second contractors association and in which attorney discussed legality and morality of certain payments made by second contractos organization to their attorneys, was priviledged, and subsequent publication by a member of the association was also priviledged"

Smith P 355:

Although section 47 refers to the "publication" made in a "judicial proceeding," and to the persons who are absolutely privileged, the privilege therein provided is extended to judges (Lewis v. [illegible]), attorneys (Jordan v. Lemaire, supra; Freedman v. Knecht, 248 Cal.App.2d 30, 56 Cal.Rptr. 540; Thornton v. Rhoden, supra, 248 Cal.App.2d 80, 56 Cal.Rptr. 200), and to parties to private litigation (Jordan v. Lemaire, supra; and see Albertson v. Raboff, supra, 46 Cal.2d 375, 378, 295 P.2d 405). In *Thornton*, supra, the rule of the Restatement which lists judicial officers (§ 585), attorneys (§ 586), parties (§ 587),[8] witnesses (§ 588), and jurors (§ 589) as persons entitled to the absolute privilege in judicial proceedings was applied to the rule declared in subdivision 2 of section 47. (245 Cal.App.2d 90, 53 Cal.Rptr. 706.)

Application of Principles

1. First Cause of Action

(a) The letter which forms the subject of the first cause of action, although not directed to the court nor a part of any official court record, is protected by absolute privilege in the light of the foregoing authorities

APPLYING REASONING OF SMITH, SUPRA, COURT AND PRIOR CASES DEFINING LAW OF PRIVILEGE THE LETTERS FELL INTO THE PRIVEDGE CLASS. ONLY A STATE JUDGE DISQUALIFIED FOR PREJUDICE AND PERHAPS MOTIVATED BY MALICE OR HATE WOULD RULE OTHERSISE. Principles of Mayberry and Johnson (P 32) apply.

IX. CONTRARY TO THE DISTRICT COURT AND THE 9th CCA DENIALS OF DUE PROCESS IN THE STATE COURT PERMIT A COLLATERAL ATTACK IN THE FEDERAL COURTS

The Petiioner has outlined in this Petitione denials of due process in the state court proceedings by trial judge disqualified for prejudice (CCP 170.6) and dismissal for complaint under an unconstitutional cost bond statute (CCP 391) and the denial of a jury trial after jury claim and fee timely made and paid. These federal wrongs or injustices are discussed in earlier parts of this Petition.

These due process claims were summarilly denied in the district court and untreated or ignored in the 9th CCA.

As a result ample cases are cited and points made in this Petition for this court to summarilly reverse or to grant the writ.

Bradley v St Louis Terminal WarehouseCo 189 F 2d 818

> "A judgment obtained without due process is a nullity and may be attacked directly or collaterally by parties or strangers."

Brooks v State of Texas
256 F Supp 807 / 381 F 2d 619

"If issues tried in state court do not come within the written law, judgmen is void"

Brooks P 619: "An indigent defendant is entitled to the effective assistance of coun.el, and a purported trial without adequate preparation amounts' to no trial at all."

In this action the trial judge was disqualified for prejudice (CCP 170.6) and malice and hatred his witnesses and motivation the proceedings are void. Mayberry and Johnson, supra.

Mitchell v Village Creek Drainage District of Lawrence County
158 F 2d 475

"A judgment void on its face for want of jurisdiction may be attacked in direct or collateral proceeding."

The trial judge and law & motion judge both disqualified under mandatory CCP 170.6 were without jurisdiction and all their orders and judgments necessarily void. Mayberry and Johnson, supra, are to the point.

See Moores Fed. Practice Vol 1B Sec 0.407 & 0.408 at P 932: "A party may institute an action to enjoin judgment on .... grounds of denial of due process."
American Surety Co v Baldwin
287 US 156

CONCLUSION

This Court is asked to consider the First Amendment freedom to criticize public officials (NY Times) and the limitations on "activities" that are unconnected with the subject of suit or the parties or remote in time (McGee) and to reflect on the requirement for a three-judge district court ignored by a single judge and the failure to have service by US. Marshall (FRCP RULE 4c) and violations of FRCP 21, 42, 54 and 56 and to declare the judgment below as void and without jurisdiction and to summarilly reverse.

In the alternate probable jurisdiction should be noted to review on their merits the serious federal questions briefed in this Petition.

Respectfully submitted.

By_____

PETITIONER
STANLEY V.TUCKER

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAUL B. CRIKELAIR, Appellee -v- STANLEY V. TUCKER, Appellant	No 72-2646 ORDER

Before : DUNIWAY, KILKENNY, and GOODWIN,
Circuit Judges

Appellant's petition for rehearing
filed May 17, 1974 is Denied.

Dated: June 27th, 1974

UNITED STATES COURT OF APPEAL

FOR THE .NINTH CIRUCIT

PAUL B. CRIKELAIR,

Appellee

-v- No 72-2646

STANLEY V. TUCKER,

Appellant

Appeal from the United States District Court for the Central District of California

Before: DUNIWAY, KILKENNY, and GOODWIN, Circuit Judges

MEMORANDUM

Crikelair brought this diversity action upon an unpaid judgment of the California Superior Court rendered against Tucker in a state case, Tucker v Crikelair. The United States District Court granted summmary judgment for Crikelair, and Tucker appealed. We affirm for the reasons stated in Threlkeld v Tucker _____F 2d _____(9th Cir 1974) decided this day.

We recognize that the contacts between Tucker and the state of California are, as related to this action brought by Crikelair, weather than the contacts relied upon in the Threlkeld case, and further that

the lapse of time (18 months) between entry of the judgment and initiation of this action to enforce that judgment is longer. However, as in Threlkeld, the claim sued upon here arose out of a state-court action brought by Tucker against the appellee. The judgment was entered upon Crikelair's counterclaim forl libel, based upon three letters written by Tucker to various California officials. The action in which the counterclaim arose was but one event in an apparent scheme of harassment against Crikelair and Threlkeld. When the action from which this counterclaim arose is seen against that backdrop, we find nothing unreasonable in requiring Tucker to litigate his responsibility for a California state-court judgment in a federal district court sitting in California.

Affirmed.

Dated: May 5th, 1974

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIF.

PUAL B. CRIKELAIR, NO. 72-83-IR

Plaintiff

-v-

STANLEY V. TUCKER

Defendant

ORDER GRANTING PLAINTIFF's MOTION FOR SUMMARY JUDGMENT, WITH FINDINGS OF FACT, AND CONCLUSIONS OF LAW PERTAINING THERETO AND DIMSISSING PURPORTED COUNTER-CLAIM

Plaintiff's Motion For Summary Judgment filed May 30, 1972 came before the Court for hearing on the date the same was noticed, June 19th, 1972 at 10AM. The only appearance was Robert R. Anderson, Esq., of Anderson & Anderson, Santa Paula, California, attorney for Plaintiff. No appearance was made on behalf of Defendant.

It appears to the Court as follows:

1. Defendant filed no timely opposition to Plaintiff's motion. The Clerk of the Court received immediately prior to the said hearing at approx 9 am June 19, 1972 a document from Defendant entitled "Defendant's Counter-Affidavit & Brief in Opposition To Summary Judgment and Statement of Genuine Issues". The court determines that said document was not timely filed and the Court orders it to be lodged only.

Under the Court's Local Rules opposition papers were due not later than June 8, 1972. Thus under the provisions of Local Rule 3 (e) 4 the instant Motion is one which is unopposed and the Court so treats it. Under Local Rule, the failure to file timely opposition is deemed consent to the granting of said Motion and the Court grants said Motion on said ground.

II. Assuming arguendo that the Court is required to consider Defendant's said documents, the Court has in fact considered them, including the various affidavits thefein contained as well as the affidavits filed in support of Plaintiff's Motion. The Court has likewise considered the points and authorities by both parties. On an alternative basis the Court likewise grants Plaintiff's said Motion and makes the following Findings of Fact and Conclusions of Law:

1.There is no disputed issue of fact

2. Defendant's documents lodged June 19, 1972 as aforesaid, assert only a legal argument as to the jurisdiction of the Court over the person of Defendant. Defendant's argument is not well taken. The Court has jurisdiction over the instant actions on two alternative bases:(1) Defendant filed an Answer herein which constitutes a general appearance; (2) the service of process upon Defendant herein was valid under the relevant jurisdictional statute becsuse of Defendant's prior contacts with this state. As to these prior contacts, it appears that Defendant has within recent years brought in the Courts of this state no less than

thirty-six separate lawsuits. He was the plaintiff in the state court action out of which the instant claim arose. In said state court action, the present Plaintiff was a defendant and successfully asserted a counterclaim for defamation and prevailed thereon, obtaining the judgment sought to be established in the Federal Court in the instant action. Thus, Defendant herein committed a tort in this District, subjecting him to the jurisdiction of this Court.

4. Defendant herein seeks by his legal argument to collaterally attack the said state court judgment. This he may not do in the instant case and the purported collateral attack furnishes no basis for denying Plaintiff the Summary Judgment sought.

5. Plaintiff is a citizen of California and Defendant is a citizen of Connecticut. The amount in controversy exceeds, exlusive of interest and costs, the sum of $10,000.

6. On JULY 2, 1970 in the Superior Court of California for the County of Ventura in an action entitled "Tucker v Crikelair" No CV 3816, Plaintiff herein obtained a judgment against Defendant in the sum of $17,500, which judgment is now final and subsisting and which judgment is entitled to be established as prayed for herein by becoming a judgment ofthis court. No part of said judgment has been paid.

7. Defendant was properly served with summons and complaint herein.

8. Plaintiff is entitled to a judgment of this Court against Defendant in the sum of $17,500 with interest at 7% per annum thereon from July 2, 1970.

III. The Court notes the inclusion in Defendant's Answer of a purported counter claim. On the Court's own motion the said counterclaim is dismissed with prejudice. The said counterclaim totally fails to state a cause of action cognizable in this Court. Its gravamen is a collateral attack on the state court judgment which has now become final and which attack cannot be maintained herein under the Civil Rights Act or on any other basis. The granting of Plaintiff's motion for Summary Judgment makes said counterclaim moot.

FOR THE REASONS STATED ABOVE, IT IS ORDERED AS FOLLOWS:

1. Plaintiff is entitled to judgmant of this Court against Defendant in sum of $17,500 with interest at 7% thereon from July 2, 1970.

2. The Defendant's purported counter-clain is dismissed with prejudice and without leave to amend.

3. The Clerk shall serve copy of Oder & Judgment contemporaneously signed and filed herewith upon plaintiff and defendant.

4. In event of appeal from this Order or judgment Appellant shall file transcript of all proceedings in Court on June 19, 1972.

Dtd: JUne 19, 1972 By / s IRVING HILL /JUDGE USD

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JEAN NEAL, ET AL Plaintiff -v- STANLEY V. TUCKER Defendant	No 50745 DECLARATION DISQUALIFYING THE HON. ROBERT R. WILLARD PURSUANT TO CCP 170.

The undersigned, Stanley V. Tucker, hereby declares:

1. That he is the defendant in this case.

2. That the Hon. Robert R. Willard to whom the instant case may be assigned is so biased against man as against woman and against father as against mother and against Defendant in this instant case and so biased or prejudiced in his understandings of rights and duties between Father and Child and Mother and Child so that affiant believes he cannot have a fair and impartial trial or hearing before said Judge.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOINS IS TRUE AND CORRECT TO THE BEST OF MY KNOWLDGE AND BELIEF.

Executed at Los Angeles, CaliforniaSept
Sept 3, 1968

STANLEY V. TUCKER

CALIFORNIA CIVIL CODE OF PROCEDURE

CCP Section 170: "No justice or judge shall sit or act as such in any action or proceeding:

(5) when it is made to appear probable that, by reason bias or prejudice of such justice or judge a fair and impartial trial cannot be had before him"

CCP Section 170.6: "Prejudice against a party or attorney.

(1) No judge or court commissioner or any court of the state of California shall try any civil.....matter nor hear any... contested matter .. when it shall be established as hereinafter provided that such judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in such action or proceeding."

AFFIDAVIT OF SERVICE BY MAIL

State of Connecticut)
County of Hartford) ss

I, STANLEY V. TUCKER, do hereby state that I have on this 18thday of Sept 1974 served three copies of the within Petition for Certification on the Respondent in Tucker v Crikelair by mailing postage prepaid first class and by depositingin the U. S. mail box at Hartford, Conn this date addressed as follows:

Robert R. Anderson, Esq.
621 E. Main Street
Santa Paula, California

By_____
STANLEY V. TUCKER

Sworn to and subscribed to before me this 18thday of Sept 1974

By_____
NOTARY PUBLIC

My commission expires_____

CERTIORARI DENIED